

000051

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

51
12/04**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

September 17, 2007

SUBJECT: 4th Amendment to Agreement for La Jolla Village Drive/Interstate 805 and Miramar Rd. Widening Projects.**GENERAL CONTRACT INFORMATION**

Recommended Contractor: Boyle Engineering, Inc.
 Amount of this Action: \$ 383,091
 Original Contract: \$ 1,330,150
 All Other Actions: \$ 1,607,214
 Cumulative: \$ 3,320,455
 Funding Source: City

SUBCONTRACTOR PARTICIPATION**This Action****Cumulative**

EDAW, Inc. (Other)	\$ 21,758.00	5.67%	\$ 184,964.00	5.57%
KTU & A (Asian Male/DBE)	\$ 5,320.00	1.39%	\$ 148,513.00	4.47%
Ninyo & Moore (Hispanic Male/DBE)	\$ 0	0%	\$ 67,365.00	2.10%
Ty Lin International (Other)	\$ 0	0%	\$ 158,066.00	4.76%
Urban Systems Assocs., Inc. (Other)	\$ 56,200.00	14.6%	\$ 367,700.00	11.07%
Linedt, Mccoll & Assocs. (White Female/DBE)	\$ 56,858.00	14.8%	\$ 222,932.00	6.74%
Total Certified Participation	\$ 62,178.00	16.9%	\$ 438,810.00	13.2%
Total Other Participation	\$ 77,958.00	20.3%	\$ 710,730.00	21.4%
Total Participation	\$ 140,136.00	37.2%	\$ 1,149,540.00	34.6%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Boyle Engineering submitted a Work Force Report for their San Diego office dated June 29, 2007. The firm's Administrative workforce consists of 54 employees and reflects under representations as shown below:

African American – Technical
 Hispanics – Technical, Administrative Support
 Females – Management and Financial, Technical
 Filipino – A&E, Science, Computer, Technical

Boyle Engineering has an approved Equal Opportunity Plan on file which details strategies to remedy deficiencies in their workforce. Staff will continue to monitor their efforts in this area.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

by:AMJ

File: Admin WOFO 2000

Date WOFO Submitted: 6/29/2007
Input by: chpGoals reflect statistical labor force
availability for the following: 2000 CLFA
San Diego, CACity of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORTFOR
Company: Boyle Engineering Corporation

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White		Other			
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	1	0	0.4%	0	0	6.2%	0	0	2	0	0	0		
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	2	0	0		
A&E, Science, Computer	2.8%	1	0	7.3%	1	1	16.2%	1	3	0.3%	0	0	16.2%	0	0	17	3	0	0		
Technical	6.6%	0	0	14.8%	1	0	17.2%	1	1	0.4%	0	0	17.2%	1	0	11	2	0	0		
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	0	5	0	0		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0		
TOTAL		1	0		2	1		3	4		0	0		1	0		30	12		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES		
ALL	M	F
3	3	0
2	0	2
27	20	7
17	14	3
0	0	0
5	0	5
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0

Female
Goals
39.8%
59.5%
22.3%
49.0%
49.4%
73.2%
62.3%
8.8%
36.7%
15.2%
11.1%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.10	0	N/A	0.36	0	N/A	0.19	1	N/A	0.01	0	N/A	0.19	0	N/A	1.19	0	(1.19)
Professional	0.08	0	N/A	0.25	0	N/A	0.13	0	N/A	0.01	0	N/A	0.13	0	N/A	1.19	2	N/A
A&E, Science, Computer	0.76	1	N/A	1.97	2	N/A	4.37	4	N/A	0.08	0	N/A	4.37	0	(4.37)	6.02	7	N/A
Technical	1.12	0	(1.12)	2.52	1	(1.52)	2.92	2	N/A	0.07	0	N/A	2.92	1	(1.92)	8.33	3	(5.33)
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.35	0	N/A	1.04	0	(1.04)	0.44	0	N/A	0.03	0	N/A	0.44	0	N/A	3.66	5	1.34
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

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REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

280027 (1-33)

TO:

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

ENGINEERING & CAPITAL PROJECTS

3. DATE:

September 14, 2007

4. SUBJECT:

Fourth Amendment to Agreement for La Jolla Village Drive/Interstate 805 and Miramar Rd. Widening Projects

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Marnell Gibson, 533-5213, MS 908A

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Kris Shackelford, 533-3781, MS 612

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	79001 RR	79001 RR			9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	30244	30244			Original Agreement \$ 1,330,150
ORGANIZATION	107	107			First Amendment \$ 453,111
OBJECT ACCOUNT	4279	4279			Second Amendment \$ 478,743
JOB ORDER	524850	526790			Third Amendment \$ 675,360
C.I.P. NUMBER	52-485.0	52-679.0			This Request (4 th) \$ 383,091
AMOUNT	\$239,177	\$143,914			Total \$ 3,320,455

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9/14/07	8	DEPUTY CHIEF	<i>[Signature]</i>	10-12-07
2	FACILITIES FINANCING	<i>[Signature]</i>	9/14/07	9	COO	NOT REQUIRED	
3	EAS	<i>[Signature]</i>	9/26/07	10	CITY ATTORNEY	<i>[Signature]</i>	10/26/07
4	EOCP	<i>[Signature]</i>	10/1/07	11	ORIG. DEPT.	<i>[Signature]</i>	10-30-07
5	LIASON OFFICE	<i>[Signature]</i>	10/8/07		DOCKET COORD: 1131 CD	COUNCIL LIAISON	<i>[Signature]</i>
6	CIP/FM	<i>[Signature]</i>	10/8/07		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7	AUDITOR	<i>[Signature]</i>	10/10/07		<input type="checkbox"/> REFER TO:	COUNCIL DATE: 11/13/07	

11. PREPARATION OF:

☒ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the Mayor or his designee to execute a Fourth Amendment to the agreement with Boyle Engineering Corporation for professional engineering services for La Jolla Village Dr./Interstate I-805, CIP 52-485.0 and Miramar Rd. Widening, CIP 52-679.0, in the amount of \$383,091.00; and
(continued)

11A. STAFF RECOMMENDATIONS:

ADOPT THE RESOLUTION(S)

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

Peters (1), Maienschein (5), Madaffer (7)

COMMUNITY AREA(S):

University

ENVIRONMENTAL IMPACT:

This activity (expenditure of funds for design and entering into an amendment to the agreement with Boyle Engineering Corporation for the design of La Jolla Village Drive/I-805 & Miramar Rd. Widening Project) is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines §15061(c)(3). This determination is predicated on Section 15004 of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review. Construction activities related to this action will be subject to review under the provisions of CEQA

HOUSING IMPACT:

None with this action

OTHER ISSUES:

Attachments: Original Agreement, First Amendment, Second Amendment, Third Amendment, proposed Fourth Amendment, Location Map, Item Subject to Charter Section 99

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2. Authorizing the expenditure of \$239,177.00 from fund 79001, Facilities Benefit Assessment Fund, CIP 52-485.0, La Jolla Village Drive/Interstate 805 and \$143,914.00 from fund 79001, Facilities Benefit Assessment Fund, CIP 52-679.0, Miramar Road Widening for the purpose of executing this Fourth Amendment to the Agreement; and
3. Authorizing the City Auditor and Comptroller, upon advice from the administering department, to return excess funds, if any, to the appropriate reserves.

RECEIVED
07 NOV - 8:19:28
CITY CLERK'S OFFICE
SAN DIEGO, CA

CITY ATTORNEY
07 OCT 15 AM 9:03
CIVIL DIVISION

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: September 14, 2007 REPORT NO.
 ATTENTION: Council President and City Council
 ORIGINATING DEPT.: Engineering and Capital Projects
 SUBJECT: Fourth Amendment to Agreement for La Jolla Village
 Drive/Interstate 805 and Miramar Road Widening Projects
 COUNCIL DISTRICTS: 1, 5, 7, Scott Peters, Brian Maienschein, Jim Madaffer
 STAFF CONTACT: Marnell Gibson / Kris Shackelford 619-533-5213/533-3781

REQUESTED ACTION: Council authorization to execute Fourth Amendment to Agreement with Boyle Engineering Corporation and authorize expenditure of funds for this purpose.

STAFF RECOMMENDATION: Approve the Resolutions and Ordinance

EXECUTIVE SUMMARY: The subject project consists of the reconstruction of La Jolla Village Drive/I-805 interchange from full clover leaf to partial clover leaf, widening the overpass structure and approaches to provide 3 through lanes with an auxiliary lane in each direction, new signalized intersections at the on and off ramps, widening La Jolla Village Drive to 8 lanes dedicating three lanes to southbound traffic, class 2 bike lanes and widening Miramar Road to eight lanes from the I-805 easterly to 300' beyond East Gate Mall.

On March 29, 2002, per RR-296192, the City Council approved a consultant agreement with Boyle Engineering Corporation for the preparation of plans and specifications for the subject project.

On January 28, 2003, per RR-297559, the City Council approved a first amendment to agreement to design the original project as two separate construction projects. This amendment expedited the widening of Miramar Rd. which is now in the final stage of construction.

On May 10, 2004, per RR-299189, the City Council approved a second amendment for additional scope of work to address additional traffic staging designs, geometric alterations at ramp intersections and ADA compliance.

On October 24, 2006, per RR-302020, the City Council approved a third amendment for additional scope of work associated with La Jolla Village Dr./I-805 to address project design changes in landscaping and irrigation, design exceptions not previously known, changes in Caltrans standards, additional construction support and plan reviews, and preparation of Record of Survey.

The Fourth Amendment to the Agreement is for additional work due to the following changes in scope associated with both the I-805/La Jolla Drive project and the Miramar Road project:

- The I-805/La Jolla Drive project required additional work from the consultant due to Caltrans issuing new standards that changed the minimum Time of Concentration (Tc) for onsite watersheds from ten minutes to five minutes. This will increase projected stormwater runoff flow rates throughout the project up to 40% and will require the addition of inlets and the possible upsizing of pipes. All drainage systems have to be re-analyzed. Bioswale calculations have to be reworked to accommodate the higher flows. Based on the revised calculations, the drainage plans, details, and quantities need to be updated.
 In addition, Caltrans traffic design requirements changed; specifically, Caltrans now requires use of the California (CA) Supplement to the federal Manual on Uniform Traffic

EXECUTIVE SUMMARY SHEET

Control Devices (MUTCD). Use of the CA MUTCD will result in revised stage construction, signing, striping, and electrical plans, quantities, and estimate as well as revisions to the Traffic Management Plan. Additionally, Caltrans no longer furnishes sign panels but requires the construction contractor to furnish them. Since the sign manufacture is now done by a private party and has to be adequately controlled, a greater level of detailed design is needed in the sign plans than previously was required.

Finally, Caltrans updated its Computer Aided Design and Drafting (CADD) standards. These updates will require significant changes to the CADD file set-up, sheet borders, and other drafting changes

- Prior to construction and in order to add an eastbound right turn lane on Miramar Road, Real Estate Assets Department proceeded with the street easement acquisition of two business parcels (0.184 acres) at the northeast corner of Miramar Rd. and Eastgate Mall. The owner of the two parcels had been contacted at the time of the land appraisal and is aware of the City of San Diego's intent to acquire the subject parcels. Afterwards, it was determined that the valuation of the parcels exceeded the project budget. Therefore, the city deleted that portion of the road improvements from the construction contract until additional funds could be identified. Within the Fiscal Year 2008 Budget, additional funds has been allocated to address this. A portion of the amendment includes design services to develop a new contract document to construct the right turn lane on Miramar Road.

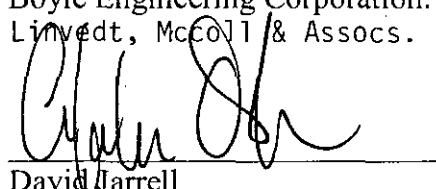
Additional biological and cultural resources monitoring is required for construction along Miramar Road as well as a re-design of an access road due to new San Diego Gas & Electric requirements. Upon completion of all construction along Miramar Road, a record survey will be required.

FISCAL CONSIDERATIONS: City of San Diego Council previously authorized \$2,937,364 for these projects. Funding for the fourth amendment to the agreement is available from from fund 79001, Facilities Benefit Assessment Fund, of which \$239,177 is in CIP 52-485.0, La Jolla Village Drive/Interstate 805 and \$143,914.00 is in CIP 52-679.0, Miramar Road Widening

PREVIOUS COUNCIL COMMITTEE ACTION: Consultant Agreement, RR-296192 of March 29, 2002; First Amendment, RR-297559 of January 28, 2003; Second Amendment, RR-299189 of May 10, 2004; Third Amendment, RR-302020 of October 24, 2006.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: University City Planning Group Community Meetings on October 14, 2003 and November 9, 2004; were given an informational presentation on the scope, design and project status.

KEY STAKEHOLDERS: City of San Diego, Caltrans, University City Planning Group, Boyle Engineering Corporation. EDAW, Inc., KTU & A, Urban Systems Assocs., Inc. Linvedt, McCall & Assocs.



David Jarrell

Director, Engineering and Capital Projects



R. F. Haas

Deputy Chief, Public Works

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The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800271

ORIGINATING

DEPT. NO.:

547

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT											

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$383,091.00

Vendor: Boyle Engineering Corp.

Purpose: To authorize the expenditure of funds for the purpose of executing the fourth amendment to the agreement for consulting services related to the La Jolla Village Drive/I-805 and Miramar Rd Widening projects.

Date: October 10, 2007 By:  Caryn McGriff

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA											
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/	EQUIP	FACILITY	AMOUNT
1	0	30244	30244	107	4279	524850					\$239,177.00
2	0	30244	30244	107	4279	526790					143,914.00
TOTAL AMOUNT											\$383,091.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2800271

CAPITAL IMPROVEMENTS

FOR

THE CITY OF SAN DIEGO

Engineering and Capital Projects

AGREEMENT

FOR

La Jolla Village Dr./I-805 and Miramar Road Widening

THE CITY OF SAN DIEGO

AND

BOYLE ENGINEERING, INC.

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND BOYLE ENGINEERING, INC.
FOR CONSULTING SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation, and Boyle Engineering, Inc. [Consultant] for the Consultant to provide Professional Services to the City on La Jolla Village Dr./I-805 and Miramar Road Widening [Project].

RECITALS

The City wants to retain the services of a professional Civil Engineering firm to provide the Civil Engineering services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Consultant [Parties] want to enter into an Agreement [Agreement] whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

PROFESSIONAL SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services.

The Consultant shall perform the Professional Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City on an hourly fee basis specifically enumerated in the Compensation Schedule [Exhibit B], Fee Schedule [Exhibit C], and Time Schedule [Exhibit D]. The compensation for this Agreement shall not exceed \$234 per hour or \$1,330,150 for performance of the Scope of Services.

1.2 Contract Administrator.

The Engineering and Capital Projects is the contract administrator for this Agreement. The Consultant shall provide the Professional Services under the direction of a designated representative of the Engineering and Capital Projects. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise.

1.3 City Modification of Scope of Services.

The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall so notify the City. If appropriate, an equitable adjustment to the Consultant's compensation may be made, provided that any adjustment must be approved by both Parties in writing.

1.4 Written Authorization.

Prior to performing any Professional Services in connection with the Project, the Consultant shall obtain from the City a written authorization to proceed. The Consultant shall advise the City in writing immediately of any anticipated change in the Scope of Services, Compensation Schedule, or Time Schedule, and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services.

All Professional Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission by the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subconsultants covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding.

The Consultant shall ensure that all plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement.

This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective until completion of the Scope of Services.

2.2 Time of Essence.

Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

2.3 Notification of Delay.

The Consultant shall immediately notify the City in writing of any delay in completion of the Professional Services. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.8 of this Agreement.

2.4 Delay.

If delays in the performance of the Professional Services are caused by unforeseen events beyond the control of both Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that (a) this provision shall not apply and the Consultant shall not be entitled to an extension of time for a delay caused by

the acts or omissions of the Consultant; and, (b) that a delay caused by the inability to obtain materials shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof, to the City's satisfaction, of the inability to obtain materials.

2.5 City's Right to Suspend for Convenience.

The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Professional Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Professional Services the Consultant has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience.

The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Professional Services under this Agreement. For services rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Consultant's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default.

If the Consultant fails to perform or adequately perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or

remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.

If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant. The rights and remedies of the City enumerated in Section 2.8 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III

COMPENSATION

3.1 General.

The City shall pay the Consultant for all the Professional Services and all expenses related to performance under this Agreement, in an amount not to exceed \$1,330,150, as set forth in the Compensation Schedule. The Consultant shall be entitled to compensation for the Professional Services under this Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule. For the duration of this Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule.

3.2 Manner of Payment.

The Consultant shall bill all fees and expenses incurred in accordance with this Agreement directly to the City on a monthly basis.

3.2.1 Payments. The Consultant shall submit one invoice per calendar month for work performed in accordance with the Compensation Schedule. The Consultant shall include with each invoice a description of completed work. Undisputed portions of invoices to the City must be in accordance with the Fee Schedule and will be payable if approved, within thirty calendar days of receipt.

3.3 Additional Services.

If the City requires additional Professional Services [Additional Services] beyond the Scope of Services, except for Additional Costs as described in Section 3.4 of this Agreement, the Consultant will be paid an additional fee. For Additional Services, if required, a maximum fee of \$160,000 will be paid. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant beginning the Additional Services.

3.4 Additional Costs.

Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subconsultant overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for the Professional Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

3.5 Eighty Percent Notification.

The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater or less than the maximum compensation for this Agreement.

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 Industry Standards.

The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional Civil Engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and all Subconsultant's premises to review and audit the Consultant's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by City in its sole discretion. This information shall be kept by the City in strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant shall make available to the City for review and audit, all Project related accounting records and documents, and any other financial data. Upon the City's request, the Consultant shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right--Binding on Subconsultants. The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subconsultants.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Consultant's full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance.

The Consultant shall not begin the Professional Services under this Agreement until it has: (a) obtained insurance certificates reflecting evidence of all insurance required in Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.2; (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Consultant shall maintain insurance coverages as follows:

4.3.1.1 Commercial General Liability. For all of the Consultant's operations, including contractual, broad form property damage, completed operations, and independent Consultant's liability, the Consultant shall keep in full force and effect, during any and all work on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1,000,000 million per occurrence, subject to an annual aggregate of \$2,000,000 million for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability to another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

4.3.1.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. The City shall be named as an additional insured, but only for liability arising out of use of the Consultant's automobiles and only arising out of the Professional Services performed under this Agreement.

4.3.1.3 Architects & Engineers Professional Liability. For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of \$1,000,000 million per claim and \$2,000,000 million annual aggregate. The Consultant shall ensure both that (1) this policy retroactive date is on or before the date of commencement of the Project; and (2) this policy has a reporting period of three years after the date of completion or termination of this Agreement. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

4.3.1.4 Worker's Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1 million of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.2 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at

least an "A" or "A-" and "V" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City.

4.3.3 Deductibles. All deductibles on any policy shall be the responsibility of the Consultant.

4.3.4 Specific Provisions Required. Each policy required under Article IV, Sections 4.3.1.1 through 4.3.1.4 shall expressly provide, and an endorsement shall be submitted to the City, that:

4.3.4.1 Except as to Architects and Engineers Professional Liability and Workers Compensation insurance policies, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City.

4.3.4.2 The policies are primary and non-contributing to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

4.3.4.3 The policies cannot be canceled, non renewed or materially changed except after thirty calendar days prior written notice by the Consultant to the City by certified mail, as reflected in an endorsement which shall be submitted to the City except for non-payment of premium, in which case ten days notice will be provided.

4.3.4.4 Before performing any Professional Services, the Consultant shall provide the City with all Certificates of Insurance accompanied with all endorsements.

4.3.4.5 The Consultant may obtain additional insurance not required by this Agreement.

4.4 Subconsultants.

The Consultant's hiring of or retaining any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. The Consultant shall list on the Subconsultants List [Exhibit E (4)] all Subconsultants known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subconsultant Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subconsultant Contract. All contracts entered into between the Consultant and a Subconsultant shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 For each design professional Subconsultant, each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1.

4.4.1.2 The Consultant is obligated to pay the Subconsultant, for Consultant- and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subconsultant to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subconsultant Services, the Consultant shall notify the City in writing of any withholding of payment to the Subconsultant, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subconsultant must take in order to receive the amount withheld. Once the Subconsultant corrects the deficiency, the Consultant shall pay the Subconsultant the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subconsultant, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subconsultant should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subconsultant is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit E of this Agreement.

4.4.1.6 Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1.

4.5 Contract Activity Report.

The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E (6)]. The statistical information shall include the amount of

subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subconsultant listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subconsultant Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program.

The Consultant and each of its Subconsultants shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements which is attached hereto as Exhibit E and incorporated herein by this reference.

4.6.2 Non-Discrimination Ordinance. The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. The Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subconsultants, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace.

The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E (7)].

4.7.1 Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subconsultant's Agreements. The Consultant further certifies that each contract for Subconsultant Services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subconsultants shall be individually responsible for their own drug-free work place program.

4.8 Americans with Disabilities Act Statement.

The Consultant shall certify that the construction documents and specifications meet all current title 24 of the California Code of Regulations, known as the California Building Standards Code, [Title 24] requirements, and the Americans with Disabilities Act Accessibility Guidelines [ADAAG], and are in compliance with the Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

4.9 Product Endorsement.

The Consultant acknowledges and agrees to comply with the provisions of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest.

The Consultant is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq. The City may determine that a conflict of interest code requires the Consultant to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, the Consultant shall submit the necessary documentation to the City.

4.10.1 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

4.10.2 The Consultant and its Subconsultants having subcontracts amounting to 1 percent or more of the value of the Professional Services agreed to under this Agreement are precluded from participating in design services on behalf of the contractor, construction management, and any other construction services related in any way to these Professional Services without the prior written consent of the City.

4.10.3 The Consultant's personnel employed on the Project shall not accept gratuities or any other favors from any Subconsultants or potential Subconsultants. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.4 If the Consultant violates any conflict of interest laws or any of these provisions in Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorney fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance.

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance.

The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the

Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney Fees related to Mandatory Assistance.

In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.14 Energy Conservation Specifications.

Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditioning [HVAC], enable additional energy savings over that required by the State of California's Energy Efficiency Standards (title 24, Part 6 of the California Code of Regulations). The Consultant shall model the energy performance of the building using an acceptable computer model such as Energy Pro, EQuest, DOE-2, Power DOE, HAP 3.22, etc. and present the summary data to the City at or prior to 100 percent design. This analysis should include life cycle cost analysis showing recovery of construction costs through operation and maintenance costs (e.g., electricity and gas savings.) The Consultant shall prepare a cost savings matrix that lists each device being considered and one, three, five and ten-year project savings. The comparison shall include, but not limited to the following equipment: Lighting, HVAC, Water Heating, and Motors.

The Consultant shall contact the SDG&E New Construction Program at (858) 636-5725 or the San Diego Regional Energy Office at (619) 595-5634 to integrate them into the design process to ensure maximum energy performance and access to technical resources. (Consultant shall endeavor to obtain from SDG&E a UTIL-1 [Utility Incentive Worksheet] to estimate energy savings and incentives available based on the design team energy modeling.)

4.15 Year 2000 Compliance.

The Consultant warrants that the Professional Services on this Project and each product delivered, incorporated or designed for use under this Agreement that contains any software, hardware, firmware or any device which requires or is designed to do any processing, analysis, calculating or tracking of date/time data or information shall be able to accurately process, track, or create such date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations to the extent necessary for the Project and each product to function correctly and accurately from, into, and between all dates and times, including but not

limited to, from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and later, for the life of the Project.

4.16 Notification of Increased Construction Cost.

If, at any time prior to the City's approval of the final plans and specifications, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

4.17 Green Building.

The Project design and construction shall comply with City Council Green Building Policy 900-14 [Exhibit F]. The policy prescribes performance objectives of 50 percent below California's Title 24 requirements, to the extent such measures are economically justified. An average pay-back period of five years shall be used as a guide for the aggregate of all energy efficiency measures included in the Project.

4.18 Design-Build Competition Eligibility.

Any architectural firms, engineering firms, consultants, or individuals that assist the City in the development of any one or more of the following: criteria, preliminary design, or preparation of the request for proposals, shall not be eligible to participate in any subsequent competition with any Design-Build Entity. This prohibition also applies to Subconsultants hired by the City or hired by any architectural firms, engineering firms, specialty consultants, or individuals retained by the City, who, in the City's sole discretion, are determined to have a competitive advantage.

ARTICLE V

CITY'S OBLIGATIONS

5.1 Ownership of Documents.

Once the Consultant has received any compensation for the Professional Services performed, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for work performed and

includes ownership of any and all work product completed. This Section shall apply whether the Consultant's Professional Services are terminated: (a) by the completion of the Project, or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this paragraph or Agreement, the Consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by the Consultant, provided that the service rendered by the Consultant was not a proximate cause of the damage.

5.2 Additional Consultants or Contractors.

The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide the Professional Services on the Project.

5.3 Employment of City Staff.

This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or City Manager in connection with the selection of the Consultant.

5.4 Project Site Safety.

Unless otherwise provided by the Scope of Services in this Agreement, the Consultant, Subconsultant and employees are not responsible for general Project site conditions during the course of construction of the Project. The City acknowledges that the construction contractor has primary responsibility for Project site conditions, including safety of all persons and property. This provision shall not be interpreted to in any way relieve the Consultant, Subconsultants or their employees of their obligation under Section 4.1 of this Agreement to comply with all applicable laws, codes and good consulting practices with regard to the maintenance of a safe Project site.

ARTICLE VI**INDEMNIFICATION****6.1 Indemnification and Hold Harmless Agreement.**

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or the Consultant's employees, agents, and officers, arising out of any services performed involving this Project, except liability for the Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This Section in no way alters, affects or modifies the Consultant's obligations and duties under Section 4.3.4.1 herein.

6.2 Indemnification for Professional Services.

As to the Consultant's professional obligations, work or services involving this Project, the Consultant agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Consultant or the Consultant's employees, agents or officers.

6.3 Enforcement Costs.

The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 6.1 and the indemnity provision in Section 6.2.

ARTICLE VII**MEDIATION****7.1 Mandatory Non-binding Mediation.**

With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to settle the dispute in an amicable manner, using

mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs.

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator.

A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be agreed upon.

7.4 Conduct of Mediation Sessions.

Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII

MISCELLANEOUS

8.1 Notices.

In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: City of San Diego, 1010 2nd Ave. Suite 1200, San Diego 92101 and notice to the Consultant shall be addressed to: Boyle Engineering, 7807 Convoy Court, Suite 200, San Diego 92111.

8.2 Headings.

All article headings are for convenience only and shall not affect the interpretation of this Agreement.

8.3 Non-Assignment.

The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

8.4 Independent Contractors.

The Consultant and any Subconsultants employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Professional

Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

8.5 Consultant and Subconsultant Principals for Professional Services.

It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the individuals rendering the services set forth in the Scope of Services. Accordingly, portions of the described service may not be delegated to other members of the team or Subconsultants without prior written consent by the City. It is mutually agreed that Michael Crull is the principal person responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. In the event Michael Crull becomes unavailable for any reason, the City must be consulted as to any replacement. Further, the City reserves the right, after consultation with the Consultant, to require removal of the Consultant's employees or agents.

8.6 Covenants and Conditions.

All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

8.7 Compliance with Controlling Law.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work [Exhibit G]. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

8.8 Jurisdiction, Venue, and Attorney Fees.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

8.9 Successors in Interest.

This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

8.10 Integration.

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

8.11 Counterparts.

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

8.12 No Waiver.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.13 Severability.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

8.14 Municipal Powers.

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

8.15 Drafting Ambiguities.

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

8.16 Signing Authority.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

8.17 Conflicts Between Terms.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

000082

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Engineering and Capital Projects Director, pursuant to Resolution No. R- 296192, authorizing such execution, and by the Consultant.

THE CITY OF SAN DIEGO

By: [Signature]
Frank Belock, Jr.

Title: Director

Date: 3-28-02

I HEREBY CERTIFY I can legally bind Boyle Engineering, Inc. and that I have read all of this Agreement, this 17th day of January, 20 02.

By: [Signature]
Print Name: Donald L. MacFarlane Jr.
Title: Vice President
Date: 1/17/2002

29 I HEREBY APPROVE the form and legality of the foregoing Agreement this day of March, 20 02.

CASEY GWINN, City Attorney

By: [Signature]
Title: Deputy City Attorney
Date: 3/29/02

R-296192

FIRST AMENDMENT TO AGREEMENT

This document is the First Amendment to the Agreement Between the City of San Diego and Boyle Engineering, Inc. for Consulting Services [Agreement] pertaining to the La Jolla Village Dr./I-805 and Miramar Road Widening project [Project], which is on file in the Office of the City Clerk as Document No. RR-296192.

RECITALS

- A. The parties entered into the Agreement on March 29, 2002, wherein Consultant agreed to provide Professional Services for the Project.
- B. The City desires to modify the Agreement by requiring the Consultant to design the original Project as two separate construction projects, hereinafter referenced in this First Amendment as the Interchange Project and the Miramar Road Project, according to the Scope of Services set forth in Exhibit A-1 and the Compensation Schedule set forth in Exhibit B-1.
- C. Consultant desires to provide the Professional Services required under this First Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the City and Consultant agree to modify the Agreement, a copy of which is attached hereto and incorporated herein by reference, as follows:

1. Section 1.1 is amended to read as follows:

Delete first paragraph.

ADD: "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A and Exhibit A-1] at the direction of the City for a fixed fee specifically enumerated in the Compensation Schedule [Exhibit B and Exhibit B-1]. Fee

DOCUMENT NO. RR-297559
JAN 28 2003
FILED
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Schedule [Exhibit C], and Time Schedule [Exhibit D and Exhibit D-1], for a Total Compensation not to exceed ONE MILLION FOUR HUNDRED TWENTY THREE THOUSAND FIVE HUNDRED FORTY FIVE DOLLARS (\$1,423,545) .”

2. Section 3.1 is amended to read as follows:

ADD: “The City shall pay the Consultant for all Professional Services and all expenses related to performance under this First Amendment to the Agreement, in a fixed fee amount not to exceed TWO HUNDRED FIFTY THREE THOUSAND THREE HUNDRED NINETY FIVE DOLLARS (\$253,395), as set forth in the Compensation Schedule [Exhibit B-1]. The Consultant shall be entitled to compensation for Professional Services under this First Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C]. For the duration of this First Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule.”

3. Section 3.3 is amended to read as follows:

DELETE: “\$160,000” and INSERT: “THREE HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED SIXTEEN DOLLARS (\$359,716)”

4. ADD: “The following attachments are incorporated herein by reference: Exhibit A-1, Scope of Services; Exhibit B-1, Compensation Schedule; and Exhibit D-1, Time Schedule.

5. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs in the Agreement specifically referenced. All other terms and conditions of the Agreement remain in full force and effect.

000085

IN WITNESS WHEREOF, this First Amendment to the Agreement is executed by the
City, acting by and through the San Diego City Council, and by Consultant.

Dated this 31st day of January, 2003.

THE CITY OF SAN DIEGO

By 

Frank Belock, Jr.

Print Name: _____

Title: Director

Date: 1-21-03

BOYLE ENGINEERING, INC.

By 

Print Name: Donald L. MacFarlane Jr.

Title: Vice President

Date: 1/10/2003

I HEREBY APPROVE the form and legality of the foregoing First Amendment on this

_____ day of _____, 2003.

CASEY GWINN, City Attorney

By _____

Deputy City Attorney

R - 297559

RESOLUTION NUMBER R- 297559ADOPTED ON JAN 28 2003

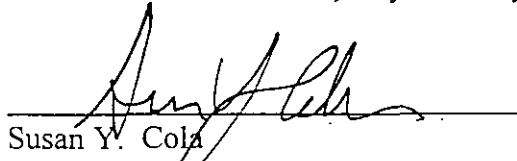
BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager be and is hereby authorized and empowered to execute, for and on behalf of said City, the First Amendment to the Agreement with Boyle Engineering Corporation, Inc., for Consulting Services [Agreement] relating to the La Jolla Village Drive / I-805 and Miramar Road Widening Project, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. 297559.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$131,416 from CIP No. 52-485.0, Facilities Benefit Assessment Fund 79001, and \$321,695 from CIP No. 52-679.0, Facilities Benefit Assessment Fund 79001, is hereby authorized, solely and exclusively for the purpose of providing funds for the above project.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized, upon advice from the administering department, to transfer excess funds, if any to the appropriate reserves.

APPROVED: CASEY GWINN, City Attorney

By


Susan Y. Cola
Deputy City Attorney

SYC:ms

01/09/03

Aud.Cert: 2300722

Or.Dept: E&CP

R-2003-893

Form=auagr.frm

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement for La Jolla Village Dr./I-805 and Miramar Road Widening [Agreement] is by and between the City of San Diego [City], a municipal corporation, and Boyle Engineering, Inc. [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as "the Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-296192 to provide professional engineering services to the City for design of the reconstruction of the interchange at La Jolla Village Drive/I-805 and widening of Miramar Road [Project].

B. The Parties entered into a First Amendment to the Agreement, which is on file in the Office of the City Clerk as Document No. RR-297559 by requiring the Consultant to design the original Project as two separate construction projects according to the Scope of Services set forth in Exhibit A-1 and the Compensation Schedule set forth in Exhibit B-1.

C. The City desires to execute a Second Amendment to the Agreement with Consultant to add scope of work for the Project and total compensation for an amount not to exceed \$478,743.

D. Consultant desires to provide the additional services required under this Second Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the Parties agree to modify the Agreement, as follows:

DOCUMENT NO. RR-299189

FILED MAY 10 2004

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1. Section 1.1 is amended to read as follows:

ADD "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-2] at the direction of the City for a fixed fee specifically enumerated in the Compensation Schedule [Exhibit B-2], Fee Schedule [Exhibit C-2] and Time Schedule [Exhibit D-2] for an additional amount for basic services not to exceed \$356,243 for a total for basic services of \$1,779,788.

2. Section 3.1 is amended to read as follows:

ADD "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Second Amendment to the Agreement, for a total amount not to exceed \$478,743 as set forth in the Compensation Schedule [Exhibit B-2]. The Consultant shall be entitled to compensation for Professional Services under this Second Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C-2]. For the duration of this Second Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule."

3. Section 3.3 is amended to read as follows:

DELETE (\$359,716) and INSERT (\$482,216).

4. The following attachments are incorporated herein by reference as follows:
Exhibits A-2, B-2, C-2, and D-2.

5. The Parties agree that this Second Amendment to the Agreement represents the entire understanding of the Parties and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

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IN WITNESS WHEREOF, this Second Amendment to the Agreement is executed by the
City, acting by and through its City Council, and by Consultant.

Dated this ____ day of MAY 10 2004, 2004.

THE CITY OF SAN DIEGO

By


Frank Belock, Jr.


Print Name: _____

Title: Director

Date: 5-11-04

BOYLE ENGINEERING, INC.

By


Print Name: Don MacFarlane, PE

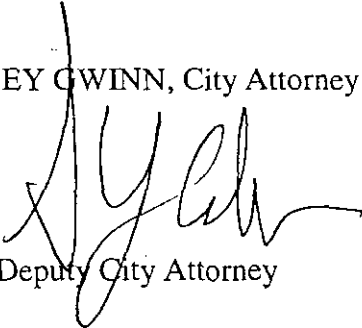
Title: Regional Vice President

Date: March 25, 2004

I HEREBY APPROVE the form and legality of the foregoing Amendment on this 24th
day of May, 2004.

CASEY GWINN, City Attorney

By


Deputy City Attorney

THIRD AMENDMENT TO AGREEMENT

This Third Amendment to the Agreement between the City of San Diego and Boyle Engineering Corporation for Consulting Services dated March 18, 2002 [Agreement], is hereby entered into by and between the City of San Diego, a municipal corporation [City], and Boyle Engineering Corporation [Consultant].

DOCUMENT NO. RR-302020
OCT 24 2006

RECITALS

FILED
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

A. The City and Consultant [collectively referenced herein as the "Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-296192, to provide the engineering services for the reconstruction of the interchange at La Jolla Village Drive/I-805 and improvement of Miramar Road [Project].

B. The Parties entered into a First Amendment to the Agreement, dated January 28, 2003, which is on file in the Office of the City Clerk as Document No. RR-297559.

C. The Parties entered into a Second Amendment to the Agreement, dated May 10, 2004, which is on file in the Office of the City Clerk as Document No. RR-299189.

D. The City desires to execute a Third Amendment to the Agreement for the Consultant to provide additional Professional Engineering Services, as indicated in the expanded Scope of Services [Exhibit A-3], for a compensation amount not to exceed \$675,360, with total compensation for services provided under the Agreement and subsequent amendments not to exceed \$2,937,364.

E. Consultant desires to provide the services required under this Third Amendment to the Agreement.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the Parties

agree to modify the Agreement, which is incorporated herein by reference, as follows:

1. Section 1.1 is amended to read as follows:

ADD: "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-3] at the direction of the City **on a fixed fee basis** specifically enumerated in the Compensation Schedule [Exhibit B-3]. The compensation for performance of the Scope of Services under this Third Amendment to the Agreement shall not exceed **\$466,880**. The Total Compensation to Consultant under this Third Amendment to the Agreement shall not exceed **\$675,360**."

2. Section 3.1 is amended to read as follows:

ADD: "The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Third Amendment to the Agreement, in an amount not to exceed **\$675,360**, as set forth in the Compensation Schedule [Exhibit B-3]. The Consultant shall be entitled to compensation for Professional Services under this Third Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C-3]. For the duration of this Third Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule [Exhibit C-3]."

3. Section 3.3 (additional costs) is amended to read as follows:

ADD: "If the City requires additional Professional Services [Additional Services] beyond the Scope of Services performed pursuant to this Third Amendment to the Agreement, except for additional costs as described in section 3.4 of this Agreement, the City shall pay Consultant an additional fee not to exceed **\$208,480**. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant

beginning the Additional Services.”

4. Article VIII is amended to read as follows:

ADD: “**8.20 San Diego’s Strong Mayor Form of Governance.** All references to ‘City Manager’ in this Agreement and all subsequent amendments thereto shall be deemed to refer to ‘Mayor.’ This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as ‘strong mayor’) form of governance pursuant to article XV of the City of San Diego City Charter.”

5. The following attachments are incorporated herein by reference as follows:

Exhibits A-3 (Scope of Services), B-3 (Compensation Schedule), C-3 (Fee Schedule) and D-3 (Time Schedule).

6. The Parties agree that this Third Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

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IN WITNESS WHEREOF, this Third Amendment to the Agreement is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to Resolution No. R- 302020, authorizing such execution, and by the Consultant.

Dated this 27 day of Nov, 2006.

THE CITY OF SAN DIEGO

By: Rick Reynolds
Rick Reynolds
Business Center Deputy Chief
Date: 11/27/06

I HEREBY CERTIFY that I can legally bind Boyle Engineering Corporation and that I have read all of this Amendment this Thirteenth day of July, 2006.

Boyle Engineering Corporation

By: F. R. Clark Fernon
Authorized Representative
Print Name: F. R. Clark Fernon
Title: Managing Engineer

I HEREBY APPROVE the form and legality of the foregoing Amendment on this 30 day of November, 2006.

Michael J. Aguirre, City Attorney

By: [Signature]
Deputy City Attorney

R- 302020

CITY OF SAN DIEGO FACILITIES FINANCING PROGRAM

TITLE: LA JOLLA VILLAGE DRIVE / I-805 INTERCHANGE RAMP

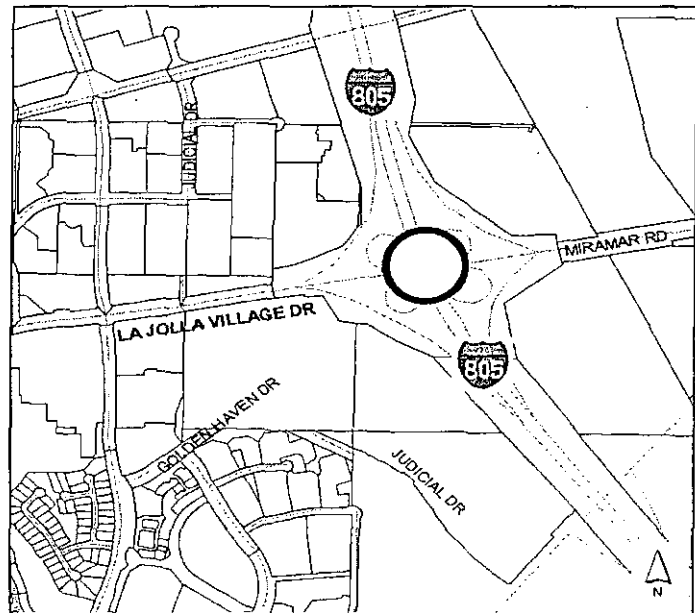
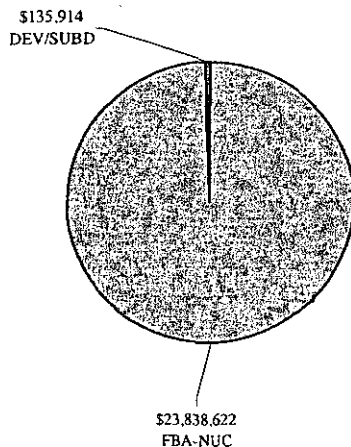
DEPARTMENT: ENGINEERING & CAPITAL PROJECTS
CIP or JO #: 52-485.0

PROJECT: NUC-C
COUNCIL DISTRICT: 1
COMMUNITY PLAN: NUC

SOURCE	FUNDING	EXPENDED	CONT. APPROP.	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
FBA-NUC	\$23,838,622	\$1,947,293	\$107,284	\$10,631,423	\$11,152,622			
FBA CREDIT								
TRANSNET								
TRANS-P								
PARK FEE								
S/L								
DEV/SUBD	\$135,914			\$135,914				
PRIVATE								
STATE								
OTHER								
UNIDENT								
TOTAL	\$23,974,536	\$1,947,293	\$107,284	\$10,767,337	\$11,152,622	\$0	\$0	\$0

SOURCE	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
FBA-NUC								
FBA CREDIT								
TRANSNET								
TRANS-P								
PARK FEE								
S/L								
DEV/SUBD								
PRIVATE								
STATE								
OTHER								
UNIDENT								
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

FUNDING SOURCES



CONTACT: KRIS SHACKELFORD

TELEPHONE: (619) 533-3781

EMAIL: Kshackelford@sanidiego.gov

**CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM****TITLE: LA JOLLA VILLAGE DRIVE / I-805 INTERCHANGE RAMPS****DEPARTMENT:** ENGINEERING & CAPITAL PROJECTS
CIP or JO #: 52-485.0**PROJECT:** NUC-C
COUNCIL DISTRICT: 1
COMMUNITY PLAN: NUC**DESCRIPTION:**

THIS PROJECT PROVIDES FOR THE CONVERSION OF THE EXISTING LA JOLLA VILLAGE DRIVE/I-805 FULL CLOVERLEAF INTERCHANGE CONFIGURATION TO A PARTIAL CLOVERLEAF INTERCHANGE CONFIGURATION. THIS RECONFIGURATION WILL INCLUDE THE WIDENING OF THE OVERPASS STRUCTURE AND APPROACHES TO PROVIDE THREE THROUGH-LANES WITH AN AUXILIARY LANE IN EACH DIRECTION. THE PROJECT WILL ALSO PROVIDE FOR THE WIDENING OF LA JOLLA VILLAGE DRIVE TO EIGHT LANES, WILL PROVIDE FOR THREE LANES TO THE SOUTHBOUND ON-RAMP, AND CLASS II BICYCLE LANES ON LA JOLLA VILLAGE DRIVE.

JUSTIFICATION:

SEE PROJECT NUC-21 FOR RELATED PROJECTS.
THIS PROJECT IS CONSISTENT WITH THE UNIVERSITY COMMUNITY PLAN AND WITH THE CITY'S PROGRESS GUIDE AND GENERAL PLAN.

FUNDING ISSUES:

LA JOLLA CROSSROADS (GARDEN COMMUNITIES) CONTRIBUTED \$135,914 IN COMPENSATION FOR WORK PERFORMED BY THE CITY ON BEHALF OF A SUBDIVIDER REQUIREMENT.

NOTES:**SCHEDULE:**

DESIGN IS IN PROCESS AND CONSTRUCTION IS SCHEDULED FOR FY 2007.

CITY OF SAN DIEGO FACILITIES FINANCING PROGRAM

TITLE: MIRAMAR ROAD - I-805 EASTERLY RAMPS TO 300 FT EAST OF EASTGATE MALL

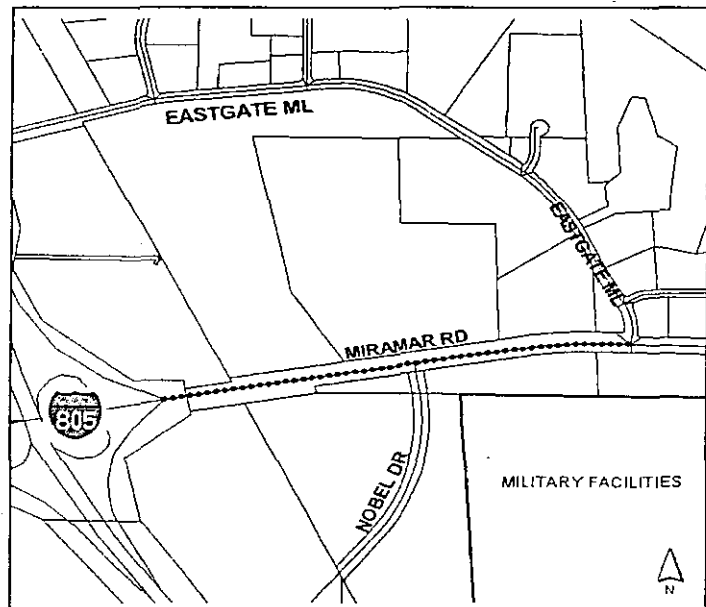
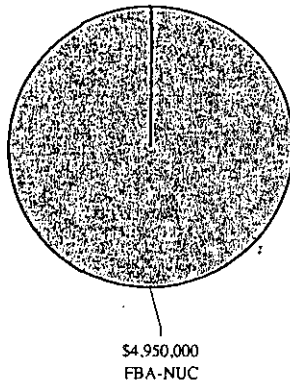
DEPARTMENT: ENGINEERING & CAPITAL PROJECTS
CIP or JO #: 52-679.0

PROJECT: NUC-50
COUNCIL DISTRICT: 1
COMMUNITY PLAN: NUC

SOURCE	FUNDING	EXPENDED	CONT APPROP	FY. 2006	FY. 2007	FY. 2008	FY. 2009	FY. 2010
FBA-NUC	\$4,950,000	\$1,023,663	\$2,976,337		\$950,000			
FBA CREDIT								
TRANSNET								
TRANS-P								
PARK FEE								
S/L								
DEV/SUBD								
PRIVATE								
STATE								
OTHER								
UNIDENT								
TOTAL	\$4,950,000	\$1,023,663	\$2,976,337	\$0	\$950,000	\$0	\$0	\$0

SOURCE	FY. 2011	FY. 2012	FY. 2013	FY. 2014	FY. 2015	FY. 2016	FY. 2017	FY. 2018
FBA-NUC								
FBA CREDIT								
TRANSNET								
TRANS-P								
PARK FEE								
S/L								
DEV/SUBD								
PRIVATE								
STATE								
OTHER								
UNIDENT								
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

FUNDING SOURCES



CONTACT: KRIS SHACKELFORD

TELEPHONE: (619) 533-3781

EMAIL: Kshackelford@sandiego.gov

000103

North University City Public Facilities Financing Plan FY 2007

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: MIRAMAR ROAD - I-805 EASTERLY RAMPS TO 300 FT EAST OF EASTGATE MALL

DEPARTMENT: PARK AND RECREATION
CIP or JO #: 52-679.0

PROJECT: NUC-50
COUNCIL DISTRICT: I
COMMUNITY PLAN: NUC

DESCRIPTION:

THIS PROJECT PROVIDES FOR THE WIDENING OF MIRAMAR ROAD TO EIGHT LANES (TRANSITION) FROM THE I-805 EASTERLY ONRAMPS AND OFFRAMPS TO 300 FEET EAST OF EASTGATE MALL. THIS PROJECT ALSO PROVIDES FOR DUAL LEFT-TURN LANES AT EASTGATE MALL.

JUSTIFICATION:

THIS PROJECT IS CONSISTENT WITH THE UNIVERSITY COMMUNITY PLAN AND WITH THE CITY'S PROGRESS GUIDE AND GENERAL PLAN.

FUNDING ISSUES:

NOTES:

SCHEDULE:

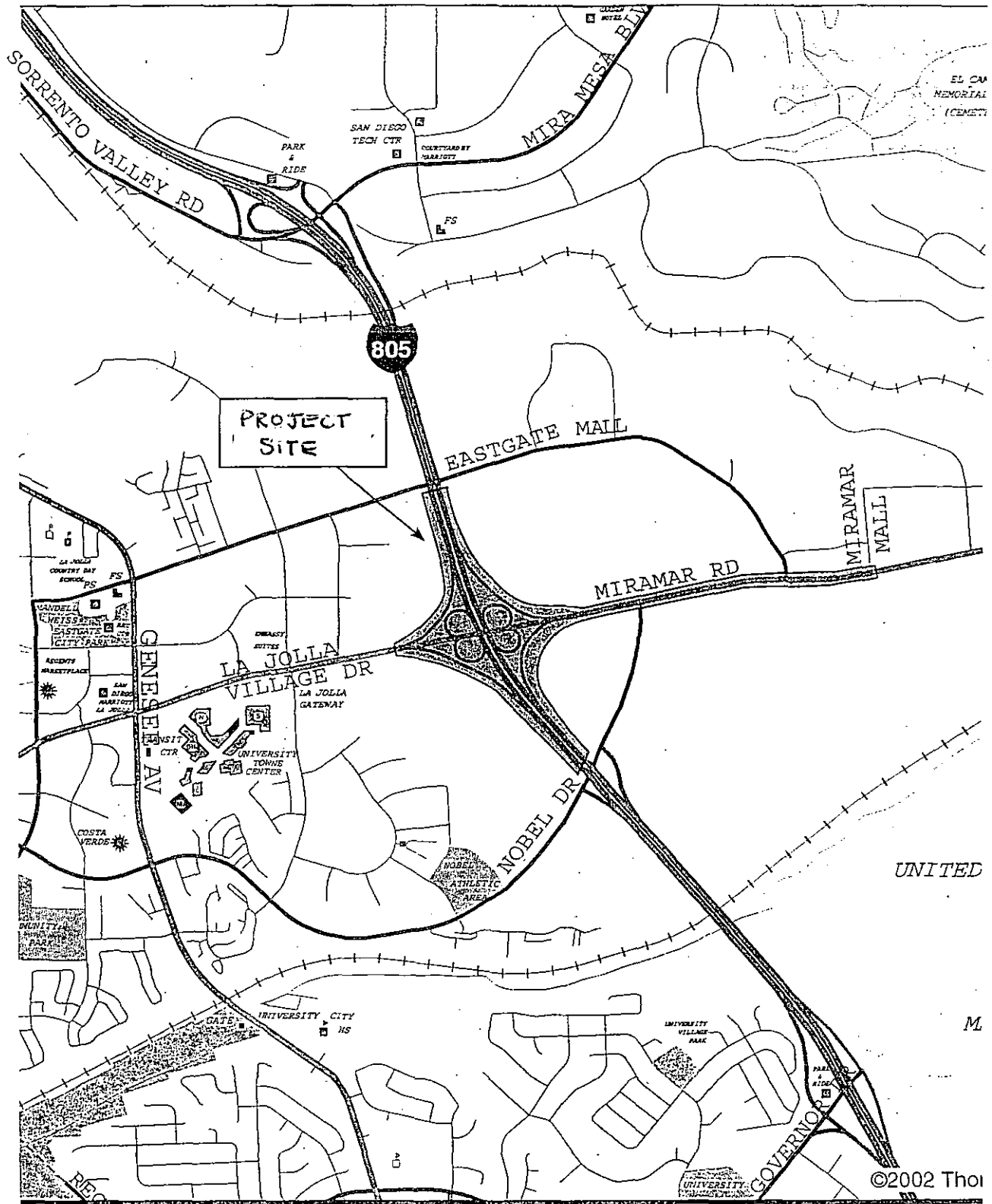
CONSTRUCTION BEGAN IN FY 2006 AND IS SCHEDULED TO BE COMPLETE IN FISCAL YEAR 2007.

CONTACT: KRIS SHACKELFORD

TELEPHONE: (619) 533-3781

EMAIL: Kshackelford@sandiego.gov

000105



Source: Thomas Bros. 2003



No Scale

La Jolla Village Drive/Miramar Road/I-805 Interchange

Graphics 3K035.02 La Jolla Village Dr\Figures\Fig2.fh8 (bradyd) 8/14/03

Vicinity Map

ORIGINAL

FOURTH AMENDMENT TO AGREEMENT

This Fourth Amendment to Agreement for Consulting Services for La Jolla Village Dr./I-805 and Miramar Rd. Widening Project [Agreement], is by and between the City of San Diego, a municipal corporation, and Boyle Engineering Corporation [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as the "Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-296192, to provide professional engineering services for the reconstruction of the interchange at La Jolla Village Drive/I-805 and improvement of Miramar Road [Project].

B. The Parties entered into a First Amendment to the Agreement, dated January 28, 2003, which is on file in the Office of the City Clerk as Document No. RR-297559 for the purpose of separating the original project into two construction projects.

C. The Parties entered into a Second Amendment to the Agreement, dated May 10, 2004, which is on file in the Office of the City Clerk as Document No. RR-299189 for the purpose of adding additional scope of work to the La Jolla Village Dr./I-805 project in order to address additional traffic staging designs, geometric alterations at ramp intersections and ADA compliance.

D. The Parties entered into a Third Amendment to the Agreement, dated October 24, 2006, which is on file in the Office of the City Clerk as Document No. RR-302020 for the purpose of addressing design changes in landscape irrigation, design exceptions not previously known, changes in Caltrans standards, additional construction support and plan reviews, and preparation of Record of Survey.

E. The City desires to execute a Fourth Amendment to the Agreement for the Consultant to provide additional Professional Engineering Services, as indicated in the expanded Scope of Services [Exhibit A-4], for a compensation amount not to exceed \$383,091.

F. Consultant desires to provide the services required under this Fourth Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the City and Consultant agree to modify the Agreement, a copy of which is attached hereto and incorporated herein by reference, as follows:

1. Section 1.1 is amended to read as follows:

ADD: "The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A-4] at the direction of the City for a fixed fee specifically enumerated in the Compensation Schedule [Exhibit B-4] and Fee Schedule [Exhibit C-4], for an additional amount of THREE HUNDRED EIGHTY THREE THOUSAND NINETY ONE DOLLARS (\$383,091) for a Total Compensation not to exceed THREE MILLION THREE HUNDRED TWENTY THOUSAND FOUR HUNDRED FIFTY FIVE DOLLARS (\$3,320,455)"

2. Section 1.2 is amended to read as follows:

ADD after last sentence: "However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise."

3. Section 1.3 is amended to read as follows:

DELETE the last sentence and INSERT: "If the City deems it appropriate, an equitable adjustment to the Design Professional's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance

with Section 8.1 of this Agreement..”

4. Section 2.1 is amended to read as follows:

DELETE in its entirety and INSERT: “**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or **September 1, 2012** whichever is the earliest but not to exceed five years unless approved by City ordinance.”

5. Section 2.7 is amended to read as follows:

INSERT after first sentence: “A Default includes the Design Professional's failure to adhere to the Time Schedule.”

6. Section 3.1 is amended to read as follows:

ADD: “The City shall pay the Consultant for all Professional Services and all expenses related to performance under this Fourth Amendment to the Agreement, in a fixed fee amount not to exceed THREE HUNDRED THOUSAND EIGHTY THREE NINETY ONE DOLLARS (\$383,091.00), as set forth in the Compensation Schedule [Exhibit B-4]. The Consultant shall be entitled to compensation for Professional Services under this fourth Amendment to the Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [exhibit C-4]. For the duration of this Fourth Amendment to the Agreement, the Consultant shall not be entitled to fees which exceed the Fee Schedule.”

7. Section 3.2 is amended to read as follows:

DELETE in its entirety and INSERT: "The City shall pay the Design Professional in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Design Professional shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Design Professional shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Design Professional shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

8. Section 4.3 is amended to read as follows:

ADD to last sentence in first paragraph: "Design Professional's liabilities, including but not limited to Design Professional's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Design Professional's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City."

9. Section 4.3.1.1 is amended to read as follows:

DELETE in its entirety and INSERT: "Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or

property damage in the amount of \$1,000,000 per occurrence and subject to an annual aggregate of \$2,000,000. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.”

10. Section 4.3.1.2 is amended to read as follows:

DELETE in its entirety and INSERT: “For all of the Design Professional’s automobiles including owned, hired and non-owned automobiles, the Design Professional shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile([any auto]).”

11. Section 4.3.1.4 is amended to read as follows:

ADD after last sentence: “All defense costs shall be outside the limits of the policy.

12. Article IV is to be amended as follows:

ADD the following sections:

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of the Design Professional and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers.

4.3.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least “A-, VI” by A.M. Best Company, that are authorized by the

California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

4.3.3.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements.

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.4.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or

Fourth Amendment to Agreement

policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Design Professional's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Design Professional's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3.4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Design Professional.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Design Professional's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3.4.3 Worker's Compensation and Employer's Liability Insurance

Endorsements.

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9:1 "Notices."

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.4.4 Architects & Engineers Professional Liability Insurance.

CANCELLATION. Except as provide for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9:1 "Notices."

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design Professional for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Design Professional may obtain additional insurance not required by this Agreement.

4.3.7 Excess Insurance. All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

13. Section 4.4.1.6 is to be amended to read as follows:

DELETE in its entirety and INSERT: "The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City."

14. Section 4.6.1 is to be amended to read as follows:

INSERT after the first sentence: "The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors."

15. Section 4.8 is to be amended to read as follows:

DELETE last sentence and INSERT: "When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Design Professional (i.e., that which provides the most access). Design Professional warrants and certifies that any and all plans and specifications prepared for the City in accordance with this agreement shall meet all requirements under Title 24 and ADAAG. Design Professional understands that while the City will be reviewing Design Professional's designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's access review process and its acceptance of Design Professional's designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG."

16. Section 4.10 is to be amended to read as follows:

ADD to the end of the first sentence: "and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595."

17. Article IV is to be amended as follows:

ADD the following sections:

4.10.1 If, in performing the Professional Services set forth in this Agreement, any member of the Design Professional's organization makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the individual shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the individual's relevant financial interests. The determination as to whether any individual members of the Design Professional's organization must make disclosures of relevant financial interests is set forth in the Determination Form (Exhibit F).

4.10.1.1 If a determination is made that certain individuals must disclose relevant financial interests, the statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The individual shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the individuals are subject to a conflict of interest code. Each year thereafter, the individuals shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the individual was subject to a conflict of interest code. A Form 700 (Leaving Office Statement) shall also be filed when the individual discontinues services under this Agreement.

4.10.1.2 If the City requires an individual member of the Design Professional's organization to file a statement of economic interests as a result of the Professional Services performed, the individual shall be considered a "City Official" subject to the provisions of the

City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

18. Section 4.18 is to be amended to read as follows:

DELETE the last sentence and INSERT: "Additionally, the City may determine in its sole discretion that a Subcontractor hired to assist with a Design-Build competition, regardless of whether the Subcontractor was hired by the City or hired by an architectural firm, engineering firm, Design Professional, or individual retained by the City, has a competitive advantage and as such is ineligible to participate in that Design-Build competition."

19. Article IV is to be amended as follows:

ADD the following sections:

4.19 Sustainable Building Policy. The Project design and construction shall comply with City Council Green Building Policy 900-14 (Exhibit G). All new or significantly remodeled City facilities shall be designed and constructed to achieve at a minimum the *Leadership in Energy and Environmental Design (LEED) "Silver" Level Certification*.

4.20 Storm Water Management Discharge Control. Unless specifically removed from the Scope of Work (Exhibit A), the Design Professional shall comply with Section 43.03 of the San Diego Municipal Code, Storm Water Management Discharge Control, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Further, the Design Professional shall prepare and incorporate into the construction documents a Storm Water Pollution Prevention Plan (SWPPP) to be implemented by the contractor during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit

requirements and any municipal regulations adopted pursuant to the permits.

20. Section 6.1 is to be amended to read as follows:

DELETE in its entirety and INSERT: **“6.1 Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional’s duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.”

21. Section 6.2 is to be amended to read as follows:

DELETE in its entirety and INSERT:

“6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with

respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.2.2 Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees."

22. Section 6.3 is to be amended to read as follows:

DELETE in its entirety and **INSERT: "6.3 Insurance.** The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance."

23. Section 6.4 is to be amended to read as follows:

INSERT: "6.4 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

24. Article VII is to be amended as follows:

ADD the following sections:

8.19 Design Professional Evaluation. City will evaluate Design Professional's performance of Professional Services on the Project using the Consultant Evaluation Form (Exhibit H).

8.20 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

8.21 Survival of Obligations. All representations, indemnifications, warranties and

guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

25. Article IX is to be amended as follows:

ADD the following sections:

INTELLECTUAL PROPERTY RIGHTS

9.1 Work For Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City and shall be delivered to the City upon request. The Contractor, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

9.2. Rights in Data. All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Design Professional, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

9.3 Intellectual Property Rights Assignment. Design Professional, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

9.4 Moral Rights. Design Professional, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Design Professional, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Design Professional, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

9.5 Subcontracting. In the event that Design Professional utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Design Professional and the Subcontractor [Subcontractor Agreement]

shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

9.6 Publication Design. Professional may not publish or reproduce any Deliverable Materials, for purposes unrelated to Design Professional's work on behalf of the City without prior written consent of the City.

9.7 Intellectual Property Warranty and Indemnification. Design Professional represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Design Professional to produce, at Design Professional's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Design Professional further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type

alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Design Professional receives payment under this contract, City shall be entitled, upon written notice to Design Professional, to withhold some or all of such payment.

9.8 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

26. The following attachments are incorporated herein by reference as follows:
Exhibits A-4 (Scope of Services), and B-4 (Compensation Schedule), C-4 (Fee Schedule).

27. The Parties agree that this Fourth Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Second Amendment to the Agreement is executed by the
City of San Diego, acting by and through its Mayor or his designee, pursuant to Resolution No.

R-_____, authorizing such execution, and by the Consultant.

Dated this _____ day of _____, 2007.

THE CITY OF SAN DIEGO

By: _____

W. Downs Prior

Principal Contract Specialist

Date: _____

I HEREBY CERTIFY that I can legally bind Boyle Engineering Corporation and that I
have read all of this Amendment this 10th day of September, 2007.

Boyle Engineering Corporation

By: F. R. Clark Fernon

Authorized Representative

Print Name: F. R. Clark Fernon

Title: Managing Engineer

I HEREBY APPROVE the form and legality of the foregoing Amendment on this
_____ day of _____, 2007.

Michael J. Aguirre, City Attorney

By: _____

Deputy City Attorney

**City of San Diego/Boyle Engineering Corporation
La Jolla Village Dr/I-805 & Miramar Rd Widening Project
Contract Amendment 4
Exhibit A-4 – Scope of Services
July 26, 2007**

Introduction

Boyle Engineering Corporation (Boyle) is providing professional engineering services to the City of San Diego (City) for the design of the reconstruction and the widening of the interchange at La Jolla Village Drive/I-805 (LVD) and the Miramar Road Widening Project.

This scope of services is for additional work associated with the Miramar Road Widening Project that was not included in the original Contract, executed on March 29, 2002, Amendment 1, executed on January 31, 2003, Amendment 2, executed on May 10, 2004, or Amendment 3, executed on November 27, 2006. This scope of services includes the following task groups:

800 Additional I-805/La Jolla Village Drive Services
5500 Additional Miramar Road Services
5700 Separate PS&E for Gas Station Area

Certain assumptions have been made during the preparation of this scope of services. To the extent possible, they are stated herein. However, if the actual effort required is significantly different from the assumptions presented herein, both the City and Boyle agree to revise the scope and fee accordingly.

Assumptions

General Assumptions

1. Unless specifically modified below, the assumptions stated in the original contract and the first three amendments still apply.
2. Due to the ongoing gas station property owner negotiations, the nature of work required on this property is uncertain. If the budget to complete the described tasks is inadequate, the City and Boyle agree to negotiate additional fee to complete the work.

Scope of Work

Task 800 – Additional I-805/La Jolla Village Drive Services

830. Additional Design Services – Drainage Revisions

Caltrans changed the minimum Time of Concentration (Tc) for onsite watersheds from 10 minutes to 5 minutes. This will increase flow values throughout the project up to 40% and will require the addition of inlets and the possible upsizing of pipes. All systems will have to be re-analyzed for hydraulic compliance. Bioswale calculations have to be reworked to accommodate the higher flows. All pipes need to be checked for pressure flow conditions. This scope of work includes complying with Caltrans drainage related comments at Log-in, but also includes a credit for Task 1302 of Amendment 3.

Specifically Boyle will complete the following tasks:

Drainage Modifications - due to Tc policy change

- Drainage Calculations and Report
- Drainage Plan Sheets
- Drainage Profile Sheets
- Drainage Quantity Sheets
- Quality Control reviews
- Drainage Quadrant Submittals x (5 total)
- Final Revisions for Log-In

Project Changes - due to project delay

- Obtain new Log-in Signatures
- Coordinate and Design Fiber Optics Line conduit/pull boxes
- Update topographic reference and surface model - BIOGEN Regrading

- Update topographic reference and surface model – La Jolla Crossroads

Revise Plans - after Log-In

- Convert Existing and Proposed Surface in CaiCE – prepare for SSN/GG

Project Management

- Additional Meetings, Invoicing, Filing associated with the above-described additional work

831. Additional Design Services – Signage Sheet revisions

Due to changes in Caltrans Standards, Boyle will obtain the services of Urban Systems Associates, Inc. (USA) for revisions to the Plans, Quantities, and Estimate (PQ&E).

Specifically USA will complete the following tasks:

- Replace Base Drawing for Pavement Delineation Sheets and revise quantity sheets
- Revise Sign sheets per MUTCD
- Revise Sign quantity sheets
- Update electrical sheets
- Provide new sheets for contractor-furnished roadside signs
- Provide new sheets for contractor-furnished overhead signs
- Revise cost estimates
- Revise specifications
- Print drawings/provide CD/sign CAD
- Meetings and coordination

832. Additional Design Services – SC Sheet revisions

Due to changes in Caltrans Standards, Boyle will obtain the services of Lintvedt, McColl & Associates (LMA) for revisions to the PQ&E.

Specifically LMA will complete the following tasks:

- Modify Traffic Control Plans (57 Stage Construction sheets) due to adoption of the MUTCD
- Changes in sign code to match the new MUTCD sign codes
- Any changes in layout resulting from sign deletions
- Other changes as needed to conform to the California MUTCD (2006)
- Traffic Management Plan (TMP) revisions per Caltrans 2007 review comments.

833. Additional Design Services – Sheet Revisions/CAD changes

Due to changes in Caltrans CAD Standards, Boyle will make revisions to the PQ&E and will obtain the services of LMA for revisions to the PQ&E.

Boyle will revise all of its Plan Sheets. LMA will revise Traffic Control Plans (57 SC sheets)

834. Additional Design Services – SC Sheet Submittals

Boyle's subconsultant, Lintvedt McColl & Associates (LMA) shall make three additional submittals of the Stage Construction plans, quantities, and estimate (PQ&E) to Caltrans, as follows:

- Respond to Office Engineer comments in writing and prepare PQ&E for District Circulation.
- Respond to District Circulation comments in writing and prepare PQ&E for transmittal to Headquarters.
- Respond to Headquarters comments on an as-needed basis.

Note: In addition to the above, in lieu of the "Final Submittal" in the original contract, LMA shall submit plans and estimate to Caltrans for Office Engineer Log-in. During the preparation of the project specifications, which will be done by Caltrans, LMA shall respond to requests for information from Office Engineer, review

the draft specifications relating to the Stage Construction sheets, and provide written comments to Caltrans.

Task 5500 – Additional Miramar Road Services

5507. Additional Construction Phase Services

As requested by City staff, Boyle will perform additional construction phase services associated with Miramar Road Widening. The original scope of these services was budgeted several years ago and did not anticipate the total length of construction or the full services required. Services will include the following, as requested by City staff:

- Assist City with Contractor RFIs
- Review shop drawings
- Attend site visits
- Attend construction meetings and other project meetings
- Prepare miscellaneous redesign tasks
- Redesign SDG&E access road
- Prepare landscape and irrigation plans for SDG&E access road
- Conduct additional biological monitoring

Boyle will obtain the services of EDAW Inc. for the biological monitoring.

5508. Coordination of Improvements on Gas Station Property

Boyle will prepare a sketch of a proposed layout for the gas station/commercial building parking lots at the corner of Eastgate Mall and Miramar Road. Boyle will meet with the City staff to discuss the layout and make revisions as necessary. Boyle and the City will meet with the property owner to discuss the proposed sketch and make changes as necessary. Boyle will meet with the property owner a second time to review and discuss changes to the sketched layout.

Once the sketch layout is approved by the City and the property owner, Boyle will modify sheet 10 of the Miramar Road Improvement plans to include the new design. Boyle will also coordinate with the

landscape and irrigation subconsultant for the new landscape design and increased irrigation facilities. Boyle assumes one check plot and one final plot of Sheet 10 and the subconsultant's sheets.

5509. Record of Survey

Boyle will prepare the record of survey for the Miramar Road Widening Project after the completion of construction. Note, Boyle may employ the services of a subconsultant for this work if necessary.

A. Set Iron Pipe Monuments

Boyle will calculate the locations of the monuments. Boyle will set City iron pipe monuments in the field on the west side of the interchange, and at the gas station site east of Eastgate Mall. A total of four monuments will be set.

B. Prepare Record of Survey Maps

Boyle will prepare a Record of Survey in accordance with County of San Diego requirements. Boyle will prepare up to one (1) sheet for the City Miramar Road right-of-way. This scope assumes one draft and one final ROS will be prepared (total of two submittals).

5510. Additional Cultural Monitoring During Construction

Boyle will arrange for cultural monitoring (by the Natural History Museum) during construction of Miramar Road from the State right-of-way to Eastgate Mall, not including the immediate vicinity of the gas station property (included below).

Task 5700 – Separate PS&E for Gas Station Area

5701. Prepare Draft PS&E for Agency Review

Boyle will split the Gas Station on the east side of Eastgate Mall and Miramar Road into its own separate Plans, Specifications, and Estimate package, able to be bid and awarded as a separate stand-alone project. This task includes the following tasks:

- Splitting out and/or Preparation of plan sheets (approximately 20 sheets)
- Preparation of Special Provisions (Section 200 and 300)

- Preparation of Estimate

5702. Respond to Agency Comments and Prepare Final PS&E

Meet with City staff to review any comments on the Draft PS&E submittal. Revise the PS&E to incorporate comments and submit final PS&E to the City.

5703. Assist with Bid and Construction Phase Services

As requested by City staff, assist with the bid phase and construction phase, including responses to RFIs, assistance with change orders, and any redesign that may be requested.

5704. Cultural Monitoring During Construction

Boyle will arrange for cultural monitoring (by the Natural History Museum) during construction of the work to be done in the immediate vicinity of the gas station property.

Deliverables

Following is a summary of Boyle's deliverables under this scope of services:

Task 830 – Boyle will deliver revised drainage report and plans.

Task 831 – Boyle will deliver revised signage plans.

Task 832 – Boyle will deliver revised Stage Construction plans and revised Traffic Management Plan.

Task 833 – Boyle will deliver revised Plans due to new CAD requirements.

Task 834 – Boyle will make three additional submittals of the Stage Construction Plans, quantities and estimate.

Task 5507 – Deliverables will be on a task-by-task basis.

Task 5508 – Boyle will deliver 3 Draft and 3 Final plans and legal descriptions of the Temporary Construction Easement.

Task 5509 – Boyle will deliver 3 Draft and 3 Final sets of revised sheets.

Task 5510A – Boyle will set the Iron Pipe Monuments in the field.

Task 5510B – Boyle will deliver 4 copies of the Record of Survey Maps for each of the Draft and Final maps to the City.

Task 5511 – Boyle will deliver one copy of the monitoring report to the City.

Task 5700 – 5 copies of the Draft and 5 copies of the Final PS&E for the Gas Station design will be delivered to the City.

Compensation Schedule – See Exhibit B-4

Compensation for Task Groups 800, 5500, and 5700 will be on a lump sum basis as shown in Exhibit B-4 and billed monthly based on progress. Task Group 5700 includes a credit for Miramar Road CCO #1, which shall be shown as a deduction on Boyle's invoices for work under Task Group 5700.

Any additional services will be completed on a time and material, not-to-exceed basis, using hourly billing rates per Exhibit C-4, Fee Schedule. All hourly billing rates are subject to annual revision by Boyle, with the City Project Manager's approval, at the beginning of each calendar year.

Schedule

See below for the project schedule. Following is a summary of Boyle's schedule for the various tasks under this scope of services:

Task 830 – Schedule will be 12-weeks from NTP

Task 831 – Schedule will be 6-weeks from NTP

Task 832 – Schedule will be 4-weeks from NTP

Task 833 – Schedule will be 6-weeks from NTP

Task 834 – Schedule will be 6-weeks from NTP

Task 5507 – Schedule will be on an as-needed basis.

Task 5508 – Draft will be prepared 2 weeks after NTP; Final will be delivered 2 weeks after receipt of comments.

Task 5509 – Schedule will be on an as-needed basis.

Task 5510 – Schedule will be on an as-needed basis.

Task 5511 – As needed

Task 5700 – To be determined once property acquisition is complete

Exhibit B-4 - Compensation Schedule

La Jolla Village Drive/I-805 & Miramar Road Widening Project - Contract Amendment 4

City of San Diego

Task Description	Personnel Hours										Budget				
	Principal	Project Manager	Senior Planner	Sr. Land Surveyor	Associate Engineer	Associate Surveyor	Assistant Engineer	Sr. CADD Technician	CADD Technician	Administration	Total Hours	Labor	Subconsultants	Non-Labor	Total Non-Labor
Task 800 - Additional I-805/La Jolla Village Drive Services															
830a. Drainage Modifications due to Te Policy Change															
Drainage Calculations and Report	4	150	4		16		80	16	16	4	290	\$ 39,722		\$ 1,986	\$ 1,986
Drainage Plan Sheets	-	8	-		16		24	24	24	2	98	\$ 10,558		\$ 528	\$ 528
Drainage Profile Sheets	-	40	2		32		32	32	32	2	172	\$ 20,360		\$ 1,018	\$ 1,018
Drainage Quantity Sheets	-	8	2		24		24	16	16	2	92	\$ 10,160		\$ 508	\$ 508
QC Review by Gerard x 4	2	8	-		-		2	-	2	4	18	\$ 2,364		\$ 118	\$ 118
Drainage Quadrant Submittals x 4	1	8	2		8		32	10	10	1	72	\$ 8,094		\$ 405	\$ 405
Final Revisions for Log-In	2	32	4		-		32	16	16	4	106	\$ 12,958		\$ 646	\$ 646
Credit for Task 1302 in Amendment 3	(4)	(70)	-		-		(130)	(60)	-	(18)	(282)	\$ (33,982)		\$ (1,845)	\$ (1,845)
830b. Project Changes Due to Project Delay															
Obtain new Log-in Signatures	1	4	24		-		-	-	-	2	31	\$ 3,993		\$ 200	\$ 200
Coordinate and Design FO Line conduit/pull boxes	1	4			8		8	8	8	-	37	\$ 4,201		\$ 210	\$ 210
Update topographic reference and surface model - BIOGEN Regrading	1	4			10		-	4	4	-	23	\$ 2,807		\$ 140	\$ 140
Update topographic reference and surface model - LJ Crossroads	1	4			10		-	8	8	-	31	\$ 3,595		\$ 180	\$ 180
830c. Convert Existing and Proposed Surface in CalCE - prepare for SSN/GG	1	8			20		8	-	8	2	47	\$ 5,485		\$ 274	\$ 274
830d. Meetings, Invoicing, Filing, etc.	8	16	2		2		2	-	-	2	32	\$ 5,058		\$ 253	\$ 253
831. Traffic/Electrical Modifications Due to Caltrans Policy Changes															
Replace Base Drawing for PD Sheets and revise quantity sheets	-	-	-		-		-	-	-	-	-	\$ -	\$ 5,280	\$ -	\$ 5,280
Revise Sign sheets per MUTCD	-	-	-		-		-	-	-	-	-	\$ -	\$ 6,600	\$ -	\$ 6,600
Revise Sign quantity sheets	-	-	-		-		-	-	-	-	-	\$ -	\$ 3,960	\$ -	\$ 3,960
Update electrical sheets	-	-	-		-		-	-	-	-	-	\$ -	\$ 8,580	\$ -	\$ 8,580
Provide new sheets for contractor-furnished roadside signs + SignCAD software	-	-	-		-		-	-	-	-	-	\$ -	\$ 19,800	\$ -	\$ 19,800
Provide new sheets for contractor-furnished overhead signs	-	-	-		-		-	-	-	-	-	\$ -	\$ 6,600	\$ -	\$ 6,600
Revise cost estimates	-	-	-		-		-	-	-	-	-	\$ -	\$ 1,650	\$ -	\$ 1,650
Revise specifications	-	-	-		-		-	-	-	-	-	\$ -	\$ 1,650	\$ -	\$ 1,650
Print drawings/provide CD/sign CAD	-	-	-		-		-	-	-	-	-	\$ -	\$ 4,950	\$ -	\$ 4,950
Meetings and coordination	-	-	-		-		-	-	-	-	-	\$ -	\$ 2,750	\$ -	\$ 2,750
Project Management - Meetings, Invoicing, Filing, etc.	2	16						8	7	4	37	\$ 4,798		\$ 236	\$ 236
832. Stage Construction Modifications Due to Caltrans Policy Changes															
Title Sheet - revise SC notes and legend	-	-	-		-		-	-	-	-	-	\$ -	\$ 310	\$ -	\$ 310
Plan Sheets - redline SC plans to conform to new standards	-	-	-		-		-	-	-	-	-	\$ -	\$ 3,257	\$ -	\$ 3,257
Plan Sheets - CADD revisions to SC Sheets	-	-	-		-		-	-	-	-	-	\$ -	\$ 7,161	\$ -	\$ 7,161
Plan Sheets - In-house QC review/redline/revision of SC sheets	-	-	-		-		-	-	-	-	-	\$ -	\$ 6,714	\$ -	\$ 6,714
City Processing	-	-	-		-		-	-	-	-	-	\$ -	\$ 337	\$ -	\$ 337
Caltrans Processing	-	-	-		-		-	-	-	-	-	\$ -	\$ 175	\$ -	\$ 175
Traffic Management Plan	-	-	-		-		-	-	-	-	-	\$ -	\$ 5,500	\$ -	\$ 5,500
Project Management - Meetings, Invoicing, Filing, etc.	2	8						4	3	2	19	\$ 2,556		\$ 166	\$ 166
833. Plan Set Changes Due to Caltrans CADD Standards Revisions	2	11					7	33	33	2	88	\$ 9,583	\$ 6,089	\$ 479	\$ 6,568
834. Three Additional Submittals of Traffic/Electrical Plans															
Subtotal	24	259	40	-	146	-	121	119	187	15	911	\$ 112,312	\$ 121,363	\$ 5,502	\$ 126,865

000137

Exhibit B-4 - Compensation Schedule

La Jolla Village Drive/I-805 & Miramar Road Widening Project - Contract Amendment 4

City of San Diego

Task Description	Personnel Hours											Budget				
	Principal	Project Manager	Senior Planner	Sr. Land Surveyor	Associate Engineer	Associate Surveyor	Assistant Engineer	Sr. CADD Technician	CADD Technician	Administration	Total Hours	Labor	Subconsultants	Non-Labor	Total Non-Labor	Total
Task 5500 - Additional Miramar Road Services																
5507. Additional Construction Phase Services											-	\$ -	\$ 26,519	\$ -	\$ 26,519	\$ 26,519
5508. Coordination of Improvements on Gas Station Property		3					6			2	11	\$ 1,359		\$ 63	\$ 63	\$ 1,322
5509. Record of Survey		8		40		40				4	92	\$ 12,148		\$ 283	\$ 283	\$ 12,431
5510. Additional Cultural Monitoring During Construction											-	\$ -	\$ 11,766	\$ -	\$ 11,766	\$ 11,766
Subtotal	-	11	-	40	-	40	6	-	-	6	103	\$ 13,407	\$ 38,285	\$ 346	\$ 38,631	\$ 52,038
Task 5700 - Separate PS&E for Gas Station Area																
5701. Prepare Draft PS&E for Agency Review	8	64	8				120	80	80	40	400	\$ 44,192	\$ 2,200	\$ 2,210	\$ 4,410	\$ 48,602
5702. Respond to Agency Comments and Prepare Final PS&E	4	64	8				80	60	40	20	276	\$ 32,236	\$ 1,100	\$ 1,612	\$ 2,712	\$ 34,948
5703. Assist with Bid and Construction Phase	4	40					40		40	40	164	\$ 18,796		\$ 940	\$ 940	\$ 19,736
5704. Cultural Monitoring During Construction		2	2							2	6	\$ 714	\$ 5,500	\$ 36	\$ 5,536	\$ 6,250
Deduction for Miramar Road CCO #1	(4)	(40)	(10)				(40)	(20)	(10)	(10)	(134)	\$ (16,616)		\$ (1,044)	\$ (1,044)	\$ (17,660)
Subtotal	12	130	8	-	-	-	200	160	110	92	712	\$ 79,322	\$ 8,800	\$ 3,754	\$ 12,554	\$ 91,876
Total	36	400	48	40	146	40	327	279	297	113	1,726	\$ 205,041	\$ 168,448	\$ 9,602	\$ 178,050	\$ 383,091

Amounts shown are fee.

Personnel Category	\$/HR
Principal	\$199.00
Project Manager	\$165.00
Senior Planner	\$125.00
Sr. Land Surveyor	\$146.00
Associate Engineer	\$116.00
Associate Surveyor	\$118.00
Assistant Engineer	\$105.00
Sr. CADD Technician	\$113.00
CADD Technician	\$84.00
Administration	\$67.00

00138

2007 FEE SCHEDULE

EXHIBIT C-4

Boyle Engineering Corporation:

Principal	\$199	per hour
Project Manager or Senior Engineer II	\$165	per hour
Senior Engineer I	\$146	per hour
Associate Engineer	\$116	per hour
Sr. Land Surveyor	\$146	per hour
Surveyor	\$118	per hour
Senior Planner	\$125	per hour
Assistant Engineer	\$105	per hour
Design/CADD Supervisor	\$139	per hour
Sr. CADD Technician	\$113	per hour
CADD Technician	\$84	per hour
Project Accountant	\$86	per hour
Sr. Administration	\$67	per hour
Resource Charge	\$4.60	per hour
Mileage	Current IRS Rate	
Subconsultants and Other Direct Costs	Costs plus 10%	

EDAW, Inc.:

Environmental Principal	\$200	per hour
Environmental Senior Engineer	\$170	per hour
Environmental Project Manager	\$120	per hour
Environmental Engineer	\$110	per hour
Senior Biologist II	\$150	per hour
Senior Biologist I	\$140	per hour
GIS Specialist	\$95	per hour
Technical Editor	\$95	per hour
Environmental Analyst	\$90	per hour
Biologist I	\$90	per hour
Administrative	\$90	per hour
Graphic Artist	\$85	per hour
Word Processor	\$80	per hour

KTU+A Landscape Architectural Services:

Principal	\$160	per hour
Sr. Associate	\$130	per hour
Associate	\$110	per hour
Sr. Designer/Sr. Planner	\$100	per hour
Designer/Planner	\$90	per hour
CADD Drafter	\$90	per hour
Clerical	\$70	per hour

Lintvedt, McColl & Associates:

Principal	\$200	per hour
Senior	\$155	per hour
Assistant	\$110	per hour

2007 FEE SCHEDULE

EXHIBIT C-4

TY Lin International:

Principal Bridge Engineer	\$210	per hour
Supervising Bridge Engineer	\$175	per hour
Sr. Bridge Engineer II	\$150	per hour
Sr. Bridge Engineer I	\$135	per hour
Bridge Engineer II	\$120	per hour
Bridge Engineer I	\$110	per hour
Assistant Bridge Engineer	\$100	per hour
Civil Engineer	\$90	per hour
Structural Design Technician III	\$105	per hour
Structural Design Technician II	\$90	per hour
Structural Design Technician I	\$65	per hour
Vehicle Milage	\$0.55	per mile

Urban Systems Associates:

Principal Traffic Engineer	\$135	per hour
Principal Planning Director	\$135	per hour
Senior Transportation Planner	\$125	per hour
3D Modeling / Rendering / Animation	\$125	per hour
Senior Project Manager / Designer	\$115	per hour
Project Manager	\$95	per hour
CADD System Manager / Operator	\$85	per hour
Staff Support Services / Production	\$65	per hour

Additional Services

If authorized by the client, an overtime premium multiplier of 1.5 will be applied to the billing rate of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours. Applicable sales taxes will be added. Invoices will be rendered monthly. Payment is due upon presentation. A late payment finance charge of 1.5% per month (but not exceeding the maximum rate allowable by law) will be applied to any unpaid balance commencing 60 days after the date of the original invoice. A mark-up of 10% will be added to the work done by subconsultants.

Rates subject to annual revision on January 1st of each year.

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A FOURTH AMENDMENT TO THE AGREEMENT WITH BOYLE ENGINEERING CORPORATION FOR THE LA JOLLA VILLAGE DRIVE/INTERSTATE 805 AND MIRAMAR ROAD WIDENING PROJECTS IN THE UNIVERSITY COMMUNITY PLAN AREA.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with Boyle Engineering Corporation, for professional engineering services for the La Jolla Village Drive/Interstate 805, CIP No. 52-485.0 and Miramar Road Widening, CIP No. 52-679.0, in the amount of \$383,091 under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR _____.

Section 2. That the expenditure of an amount not to exceed \$239,177 from CIP No. 52-485.0, La Jolla Village Drive/Interstate 805, Fund No. 79001, Facilities Benefit Assessment Fund, and an amount not to exceed \$143,914 from CIP No. 52-679.0, Miramar Road Widening, Fund No. 79001, Facilities Benefit Assessment Fund, is authorized for the purpose of executing this Fourth Amendment to the Agreement for the above referenced Project.

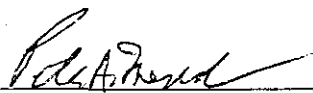
Section 3. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. That this ordinance, having been introduced and adopted by a two-thirds vote of the members of the San Diego City Council pursuant to Section 99 of the Charter of the City of San Diego, shall take effect and be in force on the thirtieth day from and after its passage.

Section 6. That this activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Sections 15061(c)(3). This determination is predicated on Section 15004 of the Guidelines, which provides direction to lead agencies on the appropriate timing for environmental review. Construction activities related to this action will be subject to review under the provisions of CEQA.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Peter A. Mesich
Deputy City Attorney

PAM:cfq
10/30/07
Or.Dept:E&CP
O-2008-64

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor